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8 UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF WASHINGTON

10 THOMAS R. FREEBURG and SANDRA
11 FREEBURG,

12 Plaintiffs,
13 v.
14 NORTHWEST ORTHOPAEDIC
15 SPECIALISTS, P.S.; JONATHAN
16 P. KEEVE, M.D.; DOUGLAS G.
17 NORQUIST, M.D.; TRACY A BERG,
18 M.D.,
19 Defendants.

NO. CV-09-93-EFS

ORDER DENYING DEFENDANT TRACY
A. BERG'S MOTION TO STRIKE FOR
FAILURE TO TIMELY IDENTIFY
EXPERT WITNESSES

Before the Court, without oral argument,¹ is Defendant Tracy A. Berg's Motion to Strike for Failure to Timely Identify Expert Witnesses (Ct. Rec. [23](#)). After review, the Court denies Defendant Berg's motion. Plaintiffs did not act in bad faith by their late filing, and their delay was both excusable and harmless. See Fed. R. Civ. P. 37(c)(1); *Wong v. Regents of Univ. Of Calif.*, 410 F.3d 1052, 1062 (9th Cir. 2005); *Yeti* by

1 The Court finds that oral argument on this motion is not warranted. LR 7.1(h)(3).

1 *Molly, Ltd. v. Deckers Outdoor Corp.*, 259 F.3d 1101, 1106 (9th Cir.
2 2001); *Henry v. Gill Indus., Inc.*, 983 F.2d 943, 946 (9th Cir. 1993).

3 Accordingly, **IT IS HEREBY ORDERED:** Defendant Berg's Motion to Strike
4 for Failure to Timely Identify Expert Witnesses (**Ct. Rec. 23**) is **DENIED**.
5 The Court's Scheduling Order (**Ct. Rec. 21**) is **AMENDED** so that Defendants'
6 expert witness disclosures shall be served no later than **July 22, 2010**
7 and Plaintiffs' rebuttal witness disclosures shall be served no later
8 than **August 5, 2010**.

9 **IT IS SO ORDERED.** The District Court Executive is directed to enter
10 this Order and distribute copies to counsel.

11 **DATED** this 9th day of July 2010.

12 _____
13 S/ Edward F. Shea
14 EDWARD F. SHEA
United States District Judge

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